

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

ERWIN HARRIS,

Petitioner,

v.

CASE NO. 04-CV-74766-DT  
HONORABLE AVERN COHN

RAYMOND BOOKER,

Respondent.

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**ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION**

This is a habeas case. On October 16, 2006, the Court issued a Memorandum and Order Denying Petition for Writ of Habeas Corpus in Part and Dismissing Supplemental Claim without Prejudice. Particularly, the Court found that Petitioner's supplemental claim, in which he asserted that the Michigan Supreme Court's decision overruling prior precedent and imposing a new test for aiding and abetting felony firearm runs contrary to *Bouie v. City of Columbia*, 347 U.S. 347, 354-55 (1964), was not exhausted. The Court therefore dismissed the supplemental claim without prejudice and directed Petitioner to present the claim to the Michigan courts.

Before the Court is Petitioner's motion for reconsideration. Petitioner states that the *Bouie* issue is not an "independent" claim, and alternatively, that exhaustion would be futile. However, a motion for reconsideration which presents issues already ruled upon by the court, either expressly or by reasonable implication, will not be granted. See *Hence v. Smith*, 49 F. Supp. 2d 547, 550 (E.D. Mich. 1999). As explained in the

Memorandum and Order, the *Bouie* claim constitutes a new legal theory for habeas relief which has not been presented to the state courts. Petitioner has an available avenue to raise that claim in the state courts and has not shown that exhaustion would be futile. Even if the lower courts are reluctant to challenge the Michigan Supreme Court's decision, Petitioner may present his claim to the Michigan Supreme Court. Petitioner has not met his burden of showing a palpable defect by which the Court has been misled or his burden of showing that a different disposition must result from a correction thereof, as required by Local Rule 7.1(g)(3).

Accordingly, Petitioner's motion is DENIED.

SO ORDERED.

s/Avern Cohn  
AVERN COHN  
UNITED STATES DISTRICT JUDGE

Dated: October 31, 2006

I hereby certify that a copy of the foregoing document was mailed to the parties of record on this date, October 31, 2006, by electronic and/or ordinary mail.

s/Julie Owens  
Case Manager, (313) 234-5160